

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

07-15-04

PCT/EP2003/000286



10/50975

Applicant's or agent's file reference NO 7097/WO	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/000286	International filing date (day/month/year) 14 janvier 2003 (14.01.2003)	Priority date (day/month/year) 18 janvier 2002 (18.01.2002)
International Patent Classification (IPC) or national classification and IPC A23L 1/31, 1/314, A23P 1/08, 1/12, A23L 1/272, A23K 1/00, 1/16		
Applicant SOCIETE DES PRODUITS NESTLE S.A.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 2 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 05 août 2003 (05.08.2003)	Date of completion of this report 20 February 2004 (20.02.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/000286

## I. Basis of the report

## 1. With regard to the elements of the international application:\*

- ☐ the international application as originally filed
- ☒ the description:  
pages \_\_\_\_\_ 1-8 \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☒ the claims:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, as amended (together with any statement under Article 19  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_ 1-9 \_\_\_\_\_, filed with the letter of \_\_\_\_\_ 21 October 2003 (21.10.2003)
- ☐ the drawings:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

## 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

## 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/fig \_\_\_\_\_

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP 03/00286

## V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

## 1. Statement

Novelty (N)	Claims	7-9	YES
	Claims	1-6	NO
Inventive step (IS)	Claims	7-9	YES
	Claims	1-6	NO
Industrial applicability (IA)	Claims	1-9	YES
	Claims		NO

## 2. Citations and explanations

1. The following documents cited in the search report are mentioned in the present report; the numbering given below will be used throughout the rest of the procedure:

D1: WO-A-00 65937 (Nestle SA) (2000-11-09);

D2: US-A-3 586 512 (Hagen Betty) (1971-06-22);

D3: EP-A-0 650 671 (Griffith Lab Worldwide INC)  
(1995-05-03).

2. Document D1 relates to a food composition containing a coating for producing roasted and brown appearances after cooking. Said coating includes colouring agents (1-15% of the coating weight), proteins (5-20% of the coating weight), thickeners and binding agents. The cooking system is a steam or microwave system (claims 1, 2, 4, 9, 10, 12 and 14-19; example 1, page 3, paragraph 2 to page 5, paragraph 1 and paragraph 5; page 6, paragraph 3 to page 7, paragraph 3; page 8, paragraph 3 to page 9, paragraph 1 and paragraph 3; page 11, paragraph 2 to page 12, paragraph 2; page 14, paragraph 2 to page 15, paragraph 1).

Document D2 relates to a food composition containing a coating for producing roasted and brown appearances after cooking. Said coating includes colouring agents, proteins (5-20% of the coating weight), thickeners and binding agents. The cooking system is a steam and hot-air system (claims 1-3 and 5-11; examples 3-5 and 7-9; column 2, lines 46-62; column 3, lines 17-35; column 4, lines 13-31; column 5, lines 43-53 and lines 63-69; column 6, lines 5-68; column 7, lines 33-44).

Document D3 relates to a food composition containing a coating for producing roasted and brown appearances after cooking. Said coating includes colouring agents (sugar 0-20%, page 3, line 10) (5-20 of the coating weight), proteins (0-40% flour gluten, page 3, lines 22 and 26) (5-20% of the coating weight), thickeners, cereals, water and binding agents. The cooking system is a steam or microwave system (claims 1, 3, 5, 7, 10 and 14; examples 1 and 2; page 2, lines 20-30 and line 54 to page 4, line 2 and lines 24-43, 47 and 48).

Documents D1-D3 do not stipulate that "the moisture of the coating is similar to that of the coated product". However, contrary to the requirements of PCT Article 6, the expression "the moisture of the coating is similar to that of the coated product" is vague and ambiguous and is not supported by the description. Said expression does not have a well-established meaning and the description does not contain any elements that would enable clarification of its definition. Furthermore, said expression does not appear to be essential for the invention of claim 1 (the PCT Guidelines, C-III, 4.5 and 4.6).

Indeed, the wording of claim 1 appears to indicate that the subject matter for which protection is sought is different from that defined in the description. What is more, no problem is stated or identified in the description.

It follows that the subject matter of claims 1-6 is not novel over D1 (PCT Article 33(2)).

Claim 7 relates to a method for preparing a composition for animal feed that has a roasted appearance after cooking. Said method involves providing equipment that includes a concentric association of two tubes of different diameter, injecting an emulsion of meats and meat by-products or fish and fish by-products into the central tube, and injecting a coating composition into the tube with the larger diameter in order to coat the emulsion with an emulsion coating containing at least one source of pigment or colouring agent and a source of proteins.

In documents D1-D3, which are considered to be the prior art closest to the subject matter of claim 7, the food products are coated using straightforward coating or immersion techniques.

None of the documents in the search report describes a preparation method involving providing equipment that includes a concentric association of two tubes of different diameter, injecting an emulsion into the central tube, and injecting a coating composition into the tube with the larger diameter in order to coat the emulsion with a coating containing at least one source of pigment or

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colouring agent and a source of proteins. As a result, claim 7 proposes an alternative method for preparing an animal feed composition.

It follows that claims 7-9 fulfil the PCT requirements of novelty and inventive step (PCT Article 33(2) and 33(3)).